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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,850	08/17/2006	Garry Chambers	39348-234994	3768
26694	7590	07/29/2009		
VENABLE LLP P.O. BOX 34385 WASHINGTON, DC 20043-9998			EXAMINER WAGGONER, TIMOTHY R	
			ART UNIT	PAPER NUMBER
			3651	
			MAIL DATE	DELIVERY MODE
			07/29/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/589,850

Applicant(s)

CHAMBERS ET AL.

Examiner

TIMOTHY R. WAGGONER

Art Unit

3651

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 19-24 is/are rejected.
- 7) ☒ Claim(s) 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 05/27/2009 with respect to the Testi rejections have been fully considered but they are not persuasive. Applicant argues that because Testi discloses a biasing leaf spring it fails to meet the requirements that pressing element is the only element of the strip movement section that is movable relative to the body. However the biasing element does not act as part of the strip movement section but more as part of the body itself. The biasing element acts to restrict movement of the flat elements stored in the body and does not act to dispense or move said strips relative to said body. As such the strip movement section of Testi only includes the dispensing wheel which rotates to move the stored flat articles relative to the body and through the dispensing opening. Furthermore applicant has indicated in all of his drawing that the pressing elements include multiple elements and as such multiple elements move to assist in the dispensing of the article therefor any number of elements can be grouped and called the pressing element as shown in applicants drawings. For at least the foregoing reasons the Testi rejections stand.

Applicant's arguments filed 05/27/2009 with respect to the Alltop rejections have been fully considered but they are not persuasive. Applicant argues that because Alltop discloses a actuator, pusher plate and a spring retainer it fails to meet the requirements that pressing element is the only element of the strip movement section that is movable relative to the body. However the spring retainer element does not act as part of the

strip movement section but more as part of the body itself. The spring retainer element acts to restrict movement of the flat elements stored in the body and does not act to dispense or move said strips relative to said body. The elements of the pusher plate and the actuator can be considered a single element as they are rigidly affixed to one another and act as a single piece. As such the strip movement section of Alltop only includes a single dispensing element to move the stored flat articles relative to the body and through the dispensing opening. Furthermore applicant has indicated in all of his drawing that the pressing elements include multiple elements and as such multiple elements move to assist in the dispensing of the article therefor any number of elements can be grouped and called the pressing element as shown in applicants drawings. For at least the foregoing reasons the Alltop rejections stand.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8,21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Testi USPN 2,288,979.

Testi discloses a dispenser comprising a main body and a textured dispensing cylinder, said cylinder being mounted in a channel to allow movement of the cylinder vertical movement relative to the plane of a stack of articles. Testi discloses dispensing

strips of metal which can be tested and held at one or more positions. The dispensing device presses against a side of the article being dispensed, said side can be considered a top, bottom, or side depending on how it is defined. Though Testi does not disclose dispensing a test strip it is capable of dispensing such an item.

Claims 1-5,12-17 and 19-24 rejected under 35 U.S.C. 102(b) as being anticipated by Alltop et al. USPN 3,308,989.

Alltop discloses a dispenser comprising a main body and a thumb actuated pressed dispensing element. The dispensing element includes slots and protrusions for guiding the element and stopping its movement at first and second positions and a protrusion for contacting the strip. The dispensing device presses against a side of the article being dispensed, said side can be considered a top, bottom, or side depending on how it is defined. Though Alltop does not disclose dispensing a test strip it is capable of dispensing such an item.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Testi in view of Wajda PGpub 2003/0121932.

Testi discloses the dispenser as claimed in claims 1-8.

Testi does not disclose a ball shaped dispenser.

Wajda teaches a ball shaped dispenser wheel.

It would be obvious to one skilled in the art to modify the dispenser of Testi to use a ball instead of a cylinder as it is an art recognized alternative.

Allowable Subject Matter

Claim 18 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TIMOTHY R. WAGGONER whose telephone number is (571)272-8204. The examiner can normally be reached on Mon-Thu 8am-2pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gene Crawford/
Supervisory Patent Examiner, Art
Unit 3651

TRW